

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3
4 UNITED STATES OF AMERICA

5 Plaintiff

6 vs. Criminal Action No. 02-19E

7 CURTIS LESHAWN DUCK

8 Defendant

9
10 PROCEEDINGS

11 Transcript of hearing commencing on Monday,
12 August 8, 2005, United States District Court, Erie,
13 Pennsylvania, before Honorable Maurice B. Cohill, Jr.,
14 District Judge.

15 APPEARANCES:

16 For the Government: US Attorney's Office
17 By: Christian Trabold, Esq.

18 For the Defendant: Federal Public Defender
19 By: Thomas Patton, Esq.

20 Reported by:
21 Michael D. Powers, RMR
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22 Proceedings recorded by mechanical stenography. Transcript
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1 P R O C E E D I N G S

2 (Court convened on Monday, August 8, 2005, at 3:30 p.m.)

3 THE COURT: Good afternoon. Be seated, please.

4 MR. TRABOLD: Good afternoon, Your Honor.

5 MR. MISKO: Good afternoon, Your Honor.

6 THE COURT: This is a hearing for Curtis LeShawn

7 Duck. The Probation Department has filed a petition

8 indicating that Mr. Duck has violated his probation.

9 And with that, Mr. Trabold, do you want to proceed?

10 MR. TRABOLD: Yes, Your Honor. I don't believe

11 Mr. Duck is contesting the nature of the violations.

12 THE COURT: Is that correct, Mr. Patton?

13 MR. MISKO: Yes, that is correct.

14 THE COURT: And as I understand it from the

15 petition that was filed or the letter of -- I guess you would
16 call it a petition that was filed by the Probation
17 Department, that he has had a number of dirty urine samples
18 and that this does amount to a Class C violation with respect
19 to the supervised release under which he had been operating
20 before.

21 Does Mr. Duck have anything or, Mr. Patton, do you
22 have anything to say on behalf of Mr. Duck with respect to
23 the violations here?

24 MR. PATTON: Yes, Your Honor, a couple issues. I
25 mean, look, it's painfully obvious to everyone here that

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1 Mr. Duck has a cocaine addiction problem and it is obvious to
2 him as well. He understands it. He has the problem, too.
3 And, you know, he has done treatment, did treatment while on
4 supervised release, continued to have trouble afterwards and
5 is currently getting treatment here in town on an outpatient
6 basis.

7 I think experience has shown, not only in
8 Mr. Duck's case, but in this Court's experience in its years
9 on the bench, incarcerating someone isn't going to solve the

10 drug problem.

11 Mr. Duck was incarcerated for eighteen months and
12 it didn't cure his drug problem and sentencing him to prison
13 now isn't going to cure the drug problem. I understand there
14 has to be a punishment for violating the terms of supervised
15 release.

16 But, sending him to prison isn't going to resolve
17 the root cause of his problems, which is a cocaine addiction,
18 that until Mr. Duck makes the personal decision that he is
19 going to stop using cocaine, isn't going to end. And I would
20 suggest that even while I know that the number of
21 violations -- of positive urines were high, some of that is a
22 testament that -- Mr. Duck was trying to do treatment so he
23 was allowed to continue on supervision but he continued to
24 give positive urine samples. But, the root problem is the
25 same. He's a cocaine addict.

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1 And so I would ask that when you consider the
2 length of sentence that needs to be imposed on Mr. Duck, that
3 you consider, whether you give him seven months, thirteen

4 months or four months that, in and of itself, isn't going to
5 solve his cocaine addiction problem. And that if really what
6 we are doing here today is simply just punishing him for not
7 following the conditions of supervision, that a sentence
8 lower than seven months is sufficient to punish him for that.

9 And then, you know, there comes a question of
10 should he be placed on supervision after his revocation
11 sentence today? And I would argue that he should not be.
12 The purpose of supervision is to help people integrate into
13 society and to try and provide them services that they may
14 need to do that. That was done here and Mr. Duck was given
15 some drug programming, but I don't think that there is a
16 reason to continue to do this.

17 If Mr. Duck, once he gets done serving -- if you
18 sentence him to a term of imprisonment today, if he wants
19 treatment, it is going to be available for him whether he is
20 on supervised release or not. He can go to AA meetings or NA
21 meetings or go out as a patient to Crossroads here in town.
22 He doesn't need to be on supervised release to get drug
23 programs.

24 I understand there is still the balance of
25 restitution that is owed. And that if he is on supervision,

1 you know, at least efforts can be made to collect restitution
2 payments from him. But, I would submit that putting someone
3 on supervised release basically just as a collection method
4 isn't really what supervised release is supposed to be about.
5 And in this case, there are other statutory remedies
6 available to try and collect unpaid restitution.

7 Under 18, United States Code, Section 3664(m), the
8 government can collect restitution through the framework set
9 out for the collection of unpaid fines, and also the victim
10 in this case, the Social Security Administration, can get an
11 abstract of the restitution order and by following
12 Pennsylvania State law can file that as a lien against
13 Mr. Duck.

14 So, you know, the statute sets up alternative ways
15 that both the victim and the government can attempt to
16 collect restitution complete, separate and distinct from
17 Mr. Duck being on supervised release.

18 So that even if the Court is concerned about the
19 unpaid restitution, the government and the Social Security

20 Administration have statutory remedies available to them that

21 they can use to try and collect the restitution in this case.

22 And, you know, furthermore, Mr. Duck has a pretty

23 sizable child support balance over in the county that is very

24 much in arrears. And so any money that, you know, would not

25 be going to the Social Security Administration in

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1 restitution, is money that the Erie County court system can

2 try and use to collect -- which they are. They have been

3 very aggressively trying to collect child support payments

4 from Mr. Duck.

5 You know, he has been incarcerated in the past on

6 it and given purged amounts to make child support payments.

7 And so if he is not making restitution payments to the Social

8 Security Administration, Erie County Family Court is going to

9 be there to try and get whatever money he is earning and has

10 to apply to a very large balance of child support.

11 So, for those reasons, I would ask if you consider

12 giving Mr. Duck a sentence below the seven months, again,

13 because you don't need to have him seven months to punish him

14 for what he has done, to punish him for being a cocaine

15 addict. You can accomplish that and send a message to the
16 other people that are on supervised release that there is a
17 consequence to violating your conditions. That means you go
18 back to prison. You can accomplish that with a sentence
19 that's less than seven months and that there is no need for
20 Mr. Duck to be back on supervised release after this.

21 And Mr. Duck would like to make a statement to Your
22 Honor.

23 THE COURT: Mr. Duck.

24 MR. DUCK: How you doing, Your Honor? Basically, I
25 have a problem, a cocaine problem and, you know, I am sorry

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1 for my actions. I called around to get into a rehab. This
2 one place in Toledo, Ohio, it's a ninety-day program. My
3 insurance is paying for it, whenever I decide to go, all due
4 to the outcome of this situation here.

5 And I'm just sorry and I'd appreciate it if you can
6 show me leniency. Thank you.

7 THE COURT: Thank you. Mr. Trabold, what is the
8 position of the government here?

9 MR. TRABOLD: Your Honor, the government is asking
10 that you impose a seven-month period of incarceration and
11 then a lengthy term of supervised release after that. Not
12 imposing supervised release on Mr. Duck is essentially giving
13 him an benefit for not following the requirements that he's
14 supposed to be following now and it removes any possibility
15 that the government has in obtaining any restitution payments
16 from Mr. Duck if you don't impose supervised release on him
17 after he's let out.

18 There are some options admittedly in the code for
19 obtaining restitution, but those are fanciful, in the extreme
20 in this case I would say. If Mr. Duck is not on supervised
21 release, there is nothing compelling him to work. He has
22 shown very little impetus on his own to go to work and the
23 only way for the government to continue to move him in the
24 direction of following requirements and being a productive
25 member of society is to keep him on supervised release. He's

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1 shown no ability to abide by the requirements of normal
2 society when he is not on supervised release.

3 So, it's my opinion it's somewhat of a defeatist

4 attitude to give him a jail sentence and don't give people
5 any supervised release. Essentially what counsel is saying
6 is we know he can't comply with any requirements placed on
7 him so just give him a jail sentence with the benefit of not
8 having to comply in the future with anything that the Court
9 may impose upon him.

10 Our position is, give him supervised release after
11 you give him his jail sentence. Give him a chance to attempt
12 or at least make some effort of becoming a productive member
13 of society and at the same time give the government the most
14 efficient method of obtaining restitution payments from him
15 as well as he will have all the benefits of the services that
16 the Probation Office can provide for him once he is released
17 from jail.

18 To do anything less would be to give him a gigantic
19 benefit of not doing what he's supposed to do.

20 THE COURT: I think I would like to talk to
21 Mr. Conde in chambers for a few minutes about this. We'll
22 take a brief recess. Nobody has to leave. And as soon as I
23 talk to Mr. Conde, we'll be back in.

24 (Court recessed at 3:40 p.m.)

25 (Court reconvened at 3:45 p.m.)

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1 THE COURT: Be seated, please.

2 Well, the problem here is, Mr. Duck, you have got
3 apparently a serious addiction here. We had a report that
4 there were thirteen, I think, indications of, in testing,
5 that you had been on illicit drugs. And, of course, we don't
6 know how many other times when you weren't tested. And I
7 don't see any choice but we have to impose the imprisonment
8 for violations but then also we'll follow that up with a
9 stint at the Community Corrections Center at Pittsburgh where
10 we have had some success with addiction.

11 So we, therefore, impose the following sentence:

12 The term of supervised release previously imposed
13 is revoked and defendant is sentenced to a term of
14 imprisonment of seven months.

15 Following that, Mr. Duck shall be placed on
16 supervised release for a period of twenty-nine months after
17 imprisonment with the same conditions and special conditions
18 as originally imposed by the Court on June 9th, 2003.

19 It's further ordered that as an additional

20 condition, Mr. Duck, upon his release from custody of the
21 Bureau of Prisons shall be immediately placed at the
22 Community Corrections Center located in Pittsburgh,
23 Pennsylvania, for a period of six months.

24 This will provide the defendant with a prolonged
25 period of structure that will perhaps convey to him that he

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1 needs to begin abiding by the boundaries and limitations set
2 by society in order to become a productive member of society.

3 So, this does fall within the guidelines suggested
4 by the Sentencing Guidelines and we believe that this is the
5 best -- will be the post possible outcome for Mr. Duck.

6 So, does the government have any objection to him
7 waiting on going into custody or should he be taken today?

8 MR. TRABOLD: Your Honor, I think he should be
9 taken into custody today.

10 THE COURT: Mr. Patton?

11 MR. PATTON: Well, Your Honor, we would obviously
12 ask that he be allowed to self-report and ask Your Honor to
13 consider, if you are going to give him six months at a

14 halfway house, that's a long stint at the halfway house, and

15 would ask that you consider reducing some the period of

16 incarceration and take into account -- I know the seven

17 months is the bottom of the guidelines range but six months

18 of community confinement is a long term.

19 THE COURT: Yes. But, that is different. This is

20 treatment as well as just halfway house. And there --

21 they've proven -- as I understand it, they have proven very

22 effective in getting their residents employment which

23 Mr. Duck badly needs.

24 And I'm going to leave it the way I've stated it,

25 and Mr. Duck will be taken into custody immediately.

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1 (Court recessed on Monday, August 8th, 2005, at 3:50 p.m.)

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4 I certify that the forgoing is a correct transcript

5 from the record of proceedings in the above-entitled matter.

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7 S/
Michael D. Powers
8 Official Reporter

9 *****NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE*****

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